

IN THE WESTERN DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

(1) ROBERT ALLEN AUTRY, an)
Incapacitated Person, individually, and (2))
SANDRA VALENTINE, Individually and)
as Guardian of Robert Allen Autry,)
Plaintiffs,)

vs.)

No. CIV-2015-1167-D
Honorable Timothy DeGuisti

(3) JOSEPH K. LESTER, in his OFFICIAL)
CAPACITY as the SHERIFF of)
CLEVELAND COUNTY, and (4) TURN)
KEY HEALTH CLINICS, LLC d/b/a ESW)
Correctional Healthcare, (5) CINDY)
BILYEU, Nurse, and (6) RAVEN FUNEZ,)
Nurse, and (7) DELORIS BROWN, Nurse,)
and (8) DEANNA WHEELER, Nurse, and)
(9) JOHN DOE, D.O., *Individually and In*)
his capacity as Chief Medical Officer, and)
(10) NORMAN REGIONAL HEALTH)
AUTHORITY d/b/a NORMAN REGIONAL)
HOSPITAL, and (11) MARSHALL L. REA,)
D.O., Individually and in his capacity as)
Agent of Norman Regional Hospital.)
Defendants.)

DEFENDANT, MARSHALL L. REA, D.O.'S
MOTION FOR SANCTIONS

Comes now Defendant, Marshall L. Rea, D.O., and respectfully moves this Court to impose against Plaintiffs any and all sanctions this Court deems appropriate pursuant to Fed. R. Civ. P. 37(b), including default judgment rendered against Plaintiffs and the payment of reasonable attorney's fees, as a result of Plaintiffs willfully failing and refusing to comply with orders of this Court.

In support of his Motion, Defendant asserts and alleges as follows:

STATEMENT OF FACTS

1. Defendant's First Set of Interrogatories to Plaintiffs and Defendant's First Requests for Production of Documents to Plaintiffs, were both served upon Plaintiffs on June 6, 2018. [Doc. 129-1, 129-2].

2. Pursuant to Fed. R. Civ. P. 33 and 34, Plaintiffs' responses were due July 8, 2018.

3. Counsel for Defendant Dr. Rea attempted to contact Counsel for Plaintiffs on July 25, 2018; July 30, 2018; and again on August 7, 2018. Counsel for Defendant Dr. Rea also sent correspondence to Counsel for Plaintiffs requesting a response or a motion to compel would be filed. [Doc. 129-3, 129-4].

4. On September 5, 2018, pursuant to Fed. R. Civ. P. 37(A), Defendant filed a Motion to Compel Discovery and Request for Attorney's Fees. [Doc. 129].

5. Plaintiffs did not file a response to Defendant's Motion.

6. On October 1, 2018, this Court granted Defendant Marshall Rea, D.O.'s Motion to Compel Discovery and directed Plaintiffs to serve full and complete responses to Defendant's discovery requests by October 15, 2018. [Doc. 132].

7. To date, Plaintiffs have not provided any answers or responses to Defendant's discovery requests.

ARGUMENT AND AUTHORITIES

Defendant brings this Motion pursuant to Fed. R. Civ. P. 37(b), which provides, "If a party...fails to obey an order or to provide or permit discovery, including an order under Rule 26(f), 35, or 37(a), the court where the action is pending may issue further just orders." The authorized sanctions under this rule include, but are not limited to,

“rendering a default judgment against the disobedient party.” Fed. R. Civ. P. 37(b)(2)(A)(vi). Fed. R. Civ. 37(b) also provides: “Instead of or in addition to the orders above, the court must order the disobedient party, the attorney advising the party, or both to pay the reasonable expenses, including attorney’s fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.” Fed. R. Civ. P. 37(b)(2)(C).

A district court is afforded the discretion in choosing an appropriate discovery sanction. *Proctor & Gamble Co. v. Haugen*, 427 F.3d 727, 738 (10th Cir. 2005); *Ehrenhaus v. Reynolds*, 965 F.2d 916, 920 (10th Cir. 1992) (“Determination of the correct sanction for a discovery violation is a fact-specific inquiry that the district court is best qualified to make.”). The district court is only limited to ascertain the sanction be “just” and “related to the particular claim which is at issue.” *Id.* at 920-21 (quoting *Corp. of Ireland, Ltd. V. Compagni des Bauxites de Guinee*, 456 U.S. 694, 707 (1982)).

Here, Plaintiffs have yet to produce any responses to Defendant’s Interrogatories and Requests for Production, even after being ordered by this Court to fully respond by a certain date. As a result, any and all sanctions should be rendered against Plaintiffs, including default judgment and the payment of reasonable expenses, including attorney’s fees.

CONCLUSION

Wherefore, Defendant respectfully requests this Court to impose against Plaintiffs any and all sanctions this Court deems appropriate, including default judgment rendered against Plaintiffs and the payment of reasonable expenses, including

attorney's fees, as a result of Plaintiffs willfully failing and refusing to comply with orders of this Court.

All of which is respectfully submitted.

WIGGINS SEWELL & OGLETREE

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Certificate of Service

I hereby certify that on this 20th day of November, 2018, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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